



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
— for —
British Columbia

Order P08-02

BOWMAN EMPLOYMENT SERVICES INC.

Catherine Boies Parker, Adjudicator

June 11, 2008

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Summary: The applicant complained that the fee which the organization sought to charge for providing copies of records containing the applicant's personal information was not reasonable and should be reduced or excused. The organization had provided a fee estimate based on the applicant's original request for her complete file and another fee estimate based on a narrower request. The second fee estimate is not minimal and is ordered reduced.

Statutes Considered: *Personal Information Protection Act*, ss. 32(2), 32(3), 36(2)(a) & 52(3)(c), *Freedom of Information and Protection of Privacy Act*, s. 75.

Authorities Considered: B.C.: Order 01-35, [2001] B.C.I.P.C.D. No. 36.

1.0 INTRODUCTION

[1] This order arises out of a request by the applicant pursuant to the *Personal Information Protection Act* ("PIPA") that Bowman Employment Services ("Bowman") provide her with a copy of her "complete file". Bowman responded in writing, stating that the estimated fees for providing the requested information would be \$535.44. Bowman stated that it required payment of this amount in full before it would prepare and deliver the requested documents.¹ The applicant wrote to this office stating:

I am respectfully asking the Office of the Information and Privacy Commissioner of BC to waive all the fees Bowman is demanding because

¹ Portfolio Officer's Fact Report, paras. 1 and 2.

they are unreasonable, and make it impossible for me to have access to my files.²

[2] As a result of mediation, the applicant provided a narrowed, itemized request for records and Bowman subsequently provided estimates for each item in the narrowed request. The total of these estimates exceeded the original fees requested by Bowman. The applicant then asserted that the revised fee was not reasonable.

2.0 ISSUE

[3] The Notice of Written Inquiry this Office issued stated that at the inquiry the commissioner or his delegate would “consider whether either the original or the revised fee requested by [Bowman] under s. 32(2) is reasonable”. In her submission, the applicant sought, among other things, an order that the fee charged by Bowman be reduced or excused.³ The respondent raised an objection that the issue of a fee waiver or reduction was not set out “in the original inquiry.”⁴ Because the request for a fee waiver or reduction was an essential part of the applicant’s submission, and she raised it in her earliest correspondence with this office, I decided that it was appropriate to address that issue. In order to ensure that neither party was prejudiced by the fact that the issue was not explicitly set out in the Notice of Written Inquiry, I provided each of the parties with an opportunity to provide additional submissions on that issue. Both parties responded with additional submissions.

[4] The issues before me in this case are:

1. Whether the original or revised fee estimate by Bowman is reasonable and
2. Whether the fee should be reduced or excused.

[5] PIPA is silent on who bears the burden of proof with respect to these issues.

3.0 DISCUSSION

[6] **3.1 Factual Background**—Bowman is a company incorporated in British Columbia which assists individuals in securing employment through assessment, skill development counselling, referral and job placement. The applicant was a client of Bowman in the provision of a program called “Access Training”. This program is designed to provide training to eligible

² Correspondence from the applicant to this Office dated March 17, 2006.

³ Applicant’s initial submission, p. 3.

⁴ Bowman’s reply submission, p. 4.

unemployed persons who have recently received Employment Insurance benefits. It is fully sponsored by the federal government.⁵

[7] It is clear that the relationship between the applicant and Bowman has been a difficult one. The applicant has filed a human rights complaint against Bowman, alleging numerous instances of discrimination.⁶ In her submissions before me, the applicant asserted that Bowman wrongly denied her travel expenses to which she was entitled, with the result that she did not have enough income to buy food for her family. She asserted that, as a result of the stress of dealing with this issue, and its impact on her pre-existing disability, she was hospitalized. She stated that one day after she wrote to Bowman informing it of her hospitalization, Bowman sent her an email which stated that she had 24 hours to hand in counselling receipts or Bowman would terminate her training program. She asserted that Bowman withheld all of the funds to which she was entitled and backdated termination of her supports by six days, so that her family was without living supports from October 24 to November 21, 2005.⁷

[8] In its reply submission, Bowman stated that, unless expressly admitted, all of the factual allegations in the applicant's submissions were denied. Bowman asserted that the issue of its interactions with the applicant is currently before the Canadian Human Rights Tribunal and should be dealt with there. However, Bowman went on to specifically deny that it ever refused the applicant any payments to which she was entitled.⁸

[9] **3.2 The Access Requests and the Fee Estimates**—The applicant's first request for her "complete file" included all paperwork, all email messages sent to or from the applicant, all emails sent to or from anyone else about the applicant and all notes regarding any phone calls made to or from anyone about the applicant (the "Original Access Request"). In particular, the applicant requested any notes resulting from phone calls about the applicant made to the Human Resources Development Canada offices in Vernon, Kelowna and Kamloops.⁹ In response to the Original Access Request, Bowman provided a fee estimate of \$535.44 (the "Original Fee Estimate").¹⁰

[10] This was based on Bowman's estimate that the request would involve copying more than 3,000 pages, for which it proposed to charge the applicant 10¢ per page copied. In addition, Bowman estimated that accessing, copying and refiling the documents would take about 24 hours, at a rate of \$8.00 per

⁵ Bowman's initial submission, pp. 2-3.

⁶ These are described in Bowman's response to the BC Human Rights complaint, which was an attachment to Bowman's reply submission.

⁷ Applicant's initial submission, paras. 29 and 30.

⁸ Bowman's reply submission, pp. 1 and 2.

⁹ Portfolio Officer's Fact Report, para. 1.

¹⁰ Feb. 19, 2006 correspondence from Bowman to applicant, Exhibit "B" to the Bowman Director's affidavit.

hour. Bowman also included an amount for Canada Pension Plan, Employment Insurance, Workers' Compensation and vacation pay expenses ("additional employment expenses") for the employee doing the work.¹¹

[11] As a result of mediation by this Office, the applicant forwarded a narrowed request for documents (the "Revised Access Request") based on certain categories of documents, defined either by date (for example, all 2002 documents) or by subject (for example, documents relating to travel expenses). The Revised Access Request included a list of documents which were not required, including the applicant's business plan. The applicant stated that all emails could be sent to her electronically, in order to save on the costs of photocopying.¹²

[12] In response, Bowman provided fee estimates for providing access to each of the categories of documents (collectively the "Revised Fee Estimate"). Bowman's Revised Fee Estimate includes the number of pages associated with the various categories of documents requested, which together total 295. The Revised Fee Estimate includes 7 hours of labour at \$8.00 per hour, 19 hours of labour at \$30.00 per hour, plus additional labour expenses. The total estimate for the narrowed request was \$753.55.¹³

[13] **3.3 The Parties' Submissions**—In her submissions, the applicant argued that the fee imposed by Bowman is not reasonable, as she has no means of paying it.¹⁴ She also argued that Bowman intentionally imposed a high fee in order to create a barrier to her ability to access her personal information.¹⁵ She noted that this Office's website states that organizations subject to PIPA "may charge a minimal fee for responding to a request but the fee should not be a barrier to access."¹⁶

[14] The applicant stated that she was "100% supported by Bowman from September 2003-December 2005, then by Service Canada from Dec 21, 2005 until May 27, 2006, and again by welfare since May 27, 2006". She stated that

¹¹ Feb. 19, 2006 correspondence from Bowman to applicant, Exhibit "B" to the Bowman Director's affidavit.

¹² Fax from the applicant to the Portfolio Officer, received April 14, 2006, Exhibit "D" to the Bowman Director's affidavit. As Bowman noted, the applicant's position on what records she requires does not seem to be consistent. While her Revised Access Request stated that she did not require certain records, including her business plan, her submissions refer to her need for the business plan in order to obtain funding. Some of the documents the applicant provided suggest that, while she originally believed she could access some of the records through Service Canada, she was subsequently told that she would have to obtain those documents directly from Bowman. As a result, it is not clear whether the Revised Access Request will still provide the applicant with the records she requires.

¹³ Correspondence to applicant from Bowman, Exhibit "E" to Bowman Director's affidavit.

¹⁴ Applicant's initial submission, paras. 7 and 8.

¹⁵ Applicant's initial submission, para. 53.

¹⁶ Applicant's initial submission, para. 54.

she was “supported by welfare before going on Bowman supports”. She stated that Bowman and Service Canada never provided extra funds which she could save toward obtaining her files. Rather, they provided the exact amount they ascertained she needed for education costs and living supports, and deducted 100% of monies received from other sources.¹⁷ She stated that welfare will not provide her with funds to access her Bowman files.¹⁸ The applicant said that her disability prevents her from working outside the home so that she could not earn any money to pay the fees. At the same time, she stated that she was trained to be a web designer, but that without Bowman’s files, including her business plan and interviews, she has been unable to start her business.¹⁹ She asserted that “due to my financial status and Bowman’s past involvement with my finances, I believe the fee should be excused.”²⁰

[15] The applicant asked for a variety of orders, including money to compensate her for preparing her submissions in this inquiry, lost wages while she recreates her business plan, or until she receives a copy of her files, and an amount for pain and suffering.²¹

[16] In her reply submission, the applicant distinguished her situation from various cases, decided under the *Freedom of Information and Protection of Privacy Act* (“FIPPA”), on which Bowman relied. She noted that, in this case, unlike the cases involving fee waivers under FIPPA, she is seeking access to her own personal information. She argued that she had met any burden of proof to demonstrate that she could not afford to pay the fee by providing “several cheque stubs”. She also asserted that waiving the fee in this case is in the public’s best interest because she will be able to start her web design business sooner if she has a copy of her business plan and contracts, among other things. This would mean that she would be financially independent sooner and not dependent on public supports. She noted that, in previous cases decided under FIPPA, none of the applicants had been 100% dependent on public supports.²²

[17] Bowman argued that the fee which it is charging is minimal and reasonable. Bowman noted the Oxford English Dictionary definition of “minimal” as “of a minimum amount, quality or degree”.²³ In its reply submission, Bowman relied on the Oxford English Dictionary definition of “reasonable” as “1 fair and sensible. 2 as much as is appropriate or fair; moderate. 3 fairly good; average”.²⁴ Bowman submitted that the fees it seeks are not excessive or extreme; rather they are aimed at recovering Bowman’s incremental costs.²⁵

¹⁷ Applicant’s initial submission, paras. 9 and 10; applicant’s reply submission, p. 3.

¹⁸ Applicant’s initial submission, para. 52.

¹⁹ Applicant’s initial submission, para. 11.

²⁰ Applicant’s initial submission, para. 56.

²¹ Applicant’s initial submission, para. 67.

²² Applicant’s reply submission, pp. 1-2.

²³ Bowman’s initial submission, p. 6.

²⁴ Bowman’s reply submission, p. 3.

²⁵ Bowman’s reply submission, pp. 3 and 4.

[18] Bowman stated that the fees which it is charging are consistent with the fees provided in s. 7 of the fees-related regulations under FIPPA and, indeed, with respect to photocopies, are substantially lower. While Bowman recognized that the FIPPA fee schedule does not apply directly to fees charged under PIPA, it suggested that these amounts are informative.²⁶

[19] Bowman vehemently denied that it has imposed the fee on the applicant in order to interfere with her access under PIPA. It stated:

The fee is being sought to offset the costs of Bowman. The fact is that the Complainant has received a large amount of documents prior to this complaint. In order to fulfill the broad sweeping requests of the complainant, costs will be incurred by Bowman.²⁷

[20] Bowman noted that, while the applicant quoted this Office's website that a fee should not be a barrier to access, that statement is not included in PIPA or any regulation under PIPA.²⁸

[21] With respect to the applicant's request for a fee waiver, Bowman stated that this is a discretionary remedy. Bowman asserted that there is no statement by the applicant that she asked that the fee be part of her current funding arrangement. Bowman said that it has already provided the applicant with various documents, free of charge. Bowman noted that criteria for a fee waiver are not provided in PIPA, in contrast to FIPPA.²⁹

[22] Bowman stated:

Finally, it is respectfully submitted that section 52(3) must take into account the reasonableness of the fee sought to be charged. This is not a case of Bowman acting in any way inappropriately. If the fee sought was excessive as compared to the costs of provision, it may be appropriate to reduce the amounts. Given that Bowman will be providing the services at a bare minimal cost, it would be inappropriate to provide a waiver to the complainant.³⁰

[23] Bowman provided an affidavit from one of its directors, describing how the cost estimates were developed. The director stated that the time required to respond to the applicant's request will be 24 hours.³¹ This is based on a page

²⁶ Bowman's initial submission, pp. 6 and 7.

²⁷ Bowman's reply submission, p. 2.

²⁸ Bowman's reply submission, p. 3.

²⁹ Bowman's reply submission, p. 4.

³⁰ Bowman's reply submission, p. 4.

³¹ Bowman Director's affidavit, paras. 17 and 18.

estimate of 3,000 pages and on Bowman's estimate that it takes approximately 0.5 minutes per page to do the following:

- Generate a list of documents
- Retrieve boxes from the lower mainland office and the Vernon office of Bowman
- Consult with staff about some of the documents and files
- Physically remove the files and documents from folders
- Remove staples
- Review the document to ensure its disclosure complies with FIPPA Copy
- Return documents to their original location
- Retrieve electronic records³²

[24] As noted, Bowman's Revised Fee Estimate included 19 hours of labour, at \$30.00 per hour, for "filtering" the records. The director's affidavit states:

Regarding the review charge, either myself, or Christine Bowman, the President, will have to review all the documents to ensure that they are complete and that there are no privileged documents, or documents that may not be disclosed under the legislation.³³

[25] **3.4 The Legislation**—Section 23(1)(a) of PIPA provides individuals with a right of access to their personal information under the control of an organization subject to PIPA. Personal information is defined as "information about an identifiable individual". Section 27 of PIPA sets out how to make a request for access to information. Section 28 imposes a duty on organizations to make reasonable efforts to assist individuals, to respond to requests and to provide the requested information, subject to certain defined exceptions.

[26] Pursuant to s. 32, an organization may charge an individual who makes a request under s. 23 a "minimal" fee for access to the individual's personal information that is not employee personal information concerning the individual. Section 36(2)(a) says that the commissioner may resolve a complaint that a fee required by an organization is not "reasonable". Section 52(3)(c) provides the commissioner with authority to confirm, excuse or reduce a fee, in appropriate circumstances.

[27] Section 58(2)(f) says that the Lieutenant Governor in Council may make regulations respecting fees, including circumstances in which fees are not payable or must not be more than a prescribed amount or percentage. To date, no regulations have been made respecting fees under PIPA.

³² Bowman Director's affidavit, para. 16

³³ Bowman Director's affidavit, para. 24.

[28] **3.5 Situation Under the *Freedom of Information and Protection of Privacy Act***—Both the applicant and Bowman referred to the treatment of fees under FIPPA. Section 75 of FIPPA provides public bodies with authority to charge fees for certain services, namely locating, retrieving and producing a record; preparing a record for disclosure; shipping and handling a record; and providing a copy of a record. It does not allow for fees respecting the first three hours spent locating and retrieving a record, or for time spent severing information from a record. Public bodies may also not charge fees with respect to an applicant's request for his or her own personal information.

[29] Section 75(5) of FIPPA says that an applicant may be excused from paying a fee if the applicant cannot afford the payment or for any other reason it is fair to excuse payment, or the record relates to a matter of public interest.

[30] Section 76(2)(k) of FIPPA provides authority for the Lieutenant Governor in Council to make regulations limiting the fees that different categories of persons are required to pay under FIPPA. The regulations under FIPPA set out a schedule of maximum fees which can be charged. For non commercial applicants, the maximum fee includes a charge of \$7.50 per ¼ hour for various services and 25¢ per page for photocopies.

[31] Bowman argued that it is possible “to draw parallels between the private and public sector” and that “guidance can be gleaned from the fees that may be charged under FIPPA”.³⁴ Bowman also referred to the differences between the PIPA and FIPPA regimes, noting that, while FIPPA specifically refers to the availability of a fee waiver in certain specified circumstances, PIPA does not.³⁵ The applicant referred to the FIPPA framework in arguing that she should be entitled to a fee waiver on the basis of inability to pay and on the basis that waiver of the fee is in the “public's best interest”.³⁶

[32] This is the first order under PIPA about fees. While FIPPA and PIPA are separate regimes, I agree that it may be useful in some respects to consider the FIPPA framework and the cases which have considered it, in interpreting and applying PIPA.

[33] **3.6 Analysis**—In my view, the appropriate approach in a case of this kind is to first determine whether a fee sought to be charged under PIPA complies with the requirement that such a fee be “minimal”. If it does not, the commissioner or his delegate may reduce or excuse the fee in order to ensure compliance with s. 32.

³⁴ Bowman's initial submission, pp. 6 and 7.

³⁵ Bowman's reply submission, p. 4.

³⁶ Applicant's reply submission, p. 2.

Commissioner's authority to excuse a fee

[34] If the fee is found to be minimal, the commissioner or adjudicator must then consider whether, in the circumstances, it is not reasonable to impose the fee upon the applicant. While PIPA provides the commissioner with authority to confirm, reduce or excuse a fee, it does not say on what basis such an order may be made. As Bowman noted, unlike FIPPA, PIPA does not set out explicit criteria for a fee waiver. One reading of PIPA might suggest that a fee reduction is warranted only where a fee is not minimal.

[35] A key difference between a fee waiver under FIPPA and excusing a fee under PIPA, of course, is that the cost associated with the waiver of a fee under FIPPA is borne by a public body, and so the public generally, while excusing a fee under PIPA would transfer the cost directly to a private organization.

[36] The legislation itself does provide, however, that the commissioner may "excuse" a fee. It might be argued that this would only be appropriate where the organization did not incur any costs in allowing access. However, the discretion given to the commissioner under s. 52(3)(c) suggests that there may be certain circumstances where it is appropriate to reduce or excuse even a minimal fee which is tied to actual expenses. The use of the term "reasonable", rather than "minimal" in s. 36(2)(a) indicates that the scope of the commissioner's power to review fees is broader than simply determining whether the fee charged complies with the statutory requirement that it be "minimal".

[37] Although I find that this is not such a case, it may be that, in some situations, the commissioner may exercise his or her discretion to excuse even a minimal fee on the basis that it is not reasonable to impose such a fee upon the applicant. In this regard, I note that the commissioner's discretion to confirm, reduce or excuse a fee in appropriate circumstances under s. 58(3)(c) of FIPPA has been repeatedly held to be a broad one.³⁷ In my view, the similar language under s. 52(3)(c) should be interpreted as granting the commissioner the discretion to determine the appropriate circumstances in which a fee should be reduced or excused.

Are the fees minimal?

[38] The term "minimal" is not defined in PIPA. In view of PIPA's objectives, a "minimal" fee should be based on the costs which an organization necessarily incurs, viewed objectively, in providing access to requested personal information. That is, such a fee should be in aid of recovering an organization's actual, necessarily incurred costs, rather than generating revenue.

³⁷ See for example, Order 01-35, [2001] B.C.I.P.C.D. No. 36, and the cases and Orders cited therein.

[39] This is not to say, however, that a “minimal” fee will always cover *all* of the costs associated with responding to an access request. While PIPA does not explicitly exclude charges for activities such as severing a record, the term “minimal” in s. 32(3) suggests that the fees which an organization may charge are limited to those which cover costs incurred in actually providing access to the applicant, namely, those associated with the activities of locating, retrieving and producing a record; preparing a record for disclosure; shipping and handling the record; and providing a copy of the record.

[40] The Original Fee Estimate is based on labour costs of \$8.00 an hour and an estimate that it will take 0.5 minutes per page to carry out the activities associated with providing access to the records. I accept that 0.5 minutes per page is an appropriately minimal fee for the activities Bowman listed. I also accept that an hourly wage of \$8.00 is minimal.

[41] Bowman has proposed a price of 10¢ per copy, in addition to labour costs of copying. Bowman has not explained what real costs it incurs with respect to producing photocopies. The affidavit of the Bowman Director simply stated “Regarding the photocopy expense, there is a cost of operating our copier. I am aware that many establishments, including the courthouse, charge \$.25 or more for [sic] page for copying.”³⁸ Bowman’s submissions asserted that the 25¢ per page fee was called modest in discussions by the Special Committee to review the *Freedom of Information and Protection of Privacy Act*.³⁹

[42] It would be preferable if, in these cases, organizations provided some explanation of what costs they actually incur in producing photocopies. However, in this case I find that each of the elements of the Original Fee Estimate, the photocopying, hourly labour rate and time per page estimate, to be minimal.

[43] I am not convinced that, in every case, a charge of 10¢ per copy will qualify as a minimal fee. I am also not convinced that it will be appropriate, in every case, to charge for the additional labour items which Bowman has charged. Certainly, this will only be appropriate where an organization demonstrates that it cannot respond to the access request utilizing its regular staff working their regular hours. Bowman provided some evidence that this was the case here.⁴⁰

[44] For the reasons set out above, I find that the Original Fee Estimate of \$535.44 is “minimal” insofar as it relates to the production of 3,000 pages of documents.

³⁸ Bowman Director’s affidavit, para. 24.

³⁹ Bowman’s initial submission, p. 7.

⁴⁰ Bowman Director’s affidavit, para. 21.

[45] The Revised Fee Estimate stated that the applicant's request will involve approximately 295 pages of records.⁴¹ Bowman's Revised Fee Estimate included 7 hours of labour at \$8.00 per hour. This amounts to 1.4 minutes per page, rather than the 0.5 minutes per page used in the original estimate. The affidavit provided no explanation of why this rate is different for the revised request. While there might be some additional time associated with finding the specific documents requested, as opposed to retrieving entire files, the revised request groups them in easily identifiable categories and there does not appear to be any reason why this task could not be performed by the student which Bowman proposed to hire. As well, the list of activities included in the estimate of 0.5 minutes per page included some time spent consulting with staff about the records. Without further explanation from Bowman, I can see no reason why the 0.5 minutes per page set out in the original estimate should not be utilized in order to set an appropriately minimal fee for the Revised Access Request. Based on Bowman's own earlier estimate of 0.5 minutes per page, responding to the Revised Access Request should require 2.45 hours of labour at \$8.00 per hour, or \$19.60.

[46] The Revised Fee Estimate also includes a charge of \$30 per hour for the time which the affidavit says the principals of Bowman will have to spend in determining whether a record is privileged, or whether, for some other reason, it cannot be disclosed.⁴² The difficulty with such a charge in this case is that it was not considered necessary when the applicant sought access to a broader range of documents. In the Original Access Request, the applicant sought access to her entire file. In the Original Fee Estimate, Bowman did not say that there was any need for the principals of Bowman to review the records. There is no explanation provided as to why the response to the Revised Access Request, which involves a subset of those documents included in the Original Access Request, would require "filtering" for issues of privilege or compliance with the legislation, when the original request did not.

[47] Whether or not the cost of severing protected information can be included in a "minimal" fee need not be decided here. Bowman provided no evidence to enable me to conclude that some information in the requested records might be withheld under s. 23 because it is privileged and on this basis alone I would not allow it to charge a fee in that respect.

[48] Bowman also did not explain what other concerns about compliance with PIPA would require 19 hours of its principals' attention. The applicant is only entitled to her own personal information. While there are obligations on Bowman to protect the personal information of persons other than the applicant, it is not at all clear that the documents requested by the applicant will involve the personal

⁴¹ Bowman Director's affidavit, Exhibit "E".

⁴² Bowman Director's affidavit, para. 24.

information of others. In this regard, I note that work product information is excluded from the definition of personal information in s. 1 of PIPA.

[49] For all of these reasons, I find that the imposition of a \$30 an hour charge for “filtering” the documents in this case is not consistent with the requirement that the fee be “minimal”.

[50] For the reasons outlined above with respect to the Original Fee Estimate, I allow the additional labour costs and the photocopying charge of 10¢ per page in this case. If the hourly labour cost totals \$19.60, the cost of the additional labour costs, based on Bowman’s formula, would be \$2.28, and the total for photocopies would be \$29.50.

[51] This would make the total charge for responding to the Revised Access Request \$51.38. I would add that I would expect Bowman to consider whether this number can be further reduced, for example, by providing any of the documents to the applicant in electronic format or by allowing the applicant to review originals and select those she wants.

Is the fee reasonable?

[52] In most circumstances, a minimal fee will be a reasonable one. However, in certain circumstances, it may be appropriate to reduce or excuse even minimal fees. The factors which should be considered in determining whether a fee should be reduced or excused on this basis will vary. However, some considerations would appear relevant to most such applications:

1. If the applicant argues that he or she is genuinely unable to pay the fee, there must be evidence to support the assertion.
2. It is appropriate to consider whether excusing the fee will cause a hardship to the organization. Under PIPA, it will always be either a private individual or a private organization which bears the cost of access. If an organization cannot afford the resources to provide the requested access, it should not be forced to expend them.
3. An applicant may be required to demonstrate that he or she could not have obtained the documents by some other means. In cases where the applicant herself has previously been in possession of the documents, but has now lost them, it may not be appropriate to impose the cost of reproducing them on an organization. Similarly, where the applicant has some other reasonable and practical means of obtaining the records, without imposing costs on the organization, the applicant may be required to pursue those other means before asking that a minimal fee be excused.

4. The purpose for which the records are sought may also be relevant. Only if the applicant seeks the records in order to protect a real, practical personal interest—such as a legal or financial interest or right—or if there is a clear public benefit to providing access, should consideration be given to excusing a minimal fee.
5. The applicant should, before a minimal fee will be waived, demonstrate that he or she has tailored his or her request to ensure that the organization is required to provide only those records which are necessary for the applicant's purposes.

[53] In this case, I have found that the Original Fee Estimate was minimal, and that the Revised Fee Estimate should be reduced to \$51.38 in order to meet the requirement that it be minimal. Applying the factors set out above, I find that there is no reason to further reduce or excuse these fee estimates on the basis that they are not reasonable.

[54] With respect to the Revised Fee Estimate, as it will be altered by my order, I am not persuaded that the applicant cannot afford to pay the \$51.38, regardless of whether the fee may be further reduced if Bowman is able to provide records electronically. The applicant has indicated her ability to pay up to \$50.00.⁴³ At least some of the records included in this request are records which the applicant has previously received. If she eliminates these from the request, the cost of providing access may well fall below the \$50.00 that she has stated she is able to pay.

[55] With respect to the Original Fee Estimate, the applicant has provided some evidence of her inability to pay the \$535.00. As noted, she has for several years been disabled and entirely dependent on income assistance. While Bowman asserted that the applicant did not provide evidence that she had asked for funds to pay the fee under her "current funding arrangement", the applicant does state that she is on "provincial disability (welfare)" and that "welfare will not pay the fee".⁴⁴ The applicant submitted several cheque stubs demonstrating the level of assistance which she received at various times.⁴⁵ While the applicant's evidence could have been clearer and more comprehensive in this regard, I accept that she cannot afford the \$535.000 fee.

[56] However, I am not persuaded the Original Request is carefully framed to ensure that Bowman is only required to produce those records the applicant has already received or records to which she could not otherwise have access. It appears that many documents have already been disclosed to the applicant. To the extent that the documents are relevant to the applicant's human rights claim, she may have access to them through the disclosure associated with the

⁴³ Applicant's correspondence to this office, dated May 24, 2006.

⁴⁴ Applicant's initial submission, para. 52.

⁴⁵ Attachments to applicant's initial submission.

hearing process. In addition, the request appears to encompass many documents which the applicant actually created and had in her possession, but which she lost as a result of computer problems. I am not persuaded that Bowman should be required to bear the full cost of producing additional copies of these documents for the applicant.

[57] As noted above, there is some uncertainty regarding whether the Revised Access Request will provide the applicant with the records she requires. As a result, the applicant may wish to further revise her access request to obtain additional documents.

4.0 CONCLUSION

[58] The applicant sought a number of orders, including compensation for the time she spent preparing her submissions, lost wages while she recreates her business plan, and pain and suffering. These orders are outside the scope of my remedial jurisdiction under s. 52 of PIPA.

[59] For the reasons given above, under s. 52(3)(c) and s. 52(4) of PIPA, I make the following order(s):

1. The Original Fee Estimate is confirmed;
2. The Revised Fee Estimate is reduced to \$51.38 on the basis set out above; and
3. If the applicant wishes to modify her Revised Access Request to eliminate certain records or to add others, the fee should be reduced or increased in accordance with these reasons. If the parties cannot agree on the application of these reasons to a revised request, they may provide me with additional submissions on that issue.

[60] Bowman is encouraged to determine whether the \$51.38 fee can be further reduced by providing some of the documents in electronic format.

June 11, 2008

ORIGINAL SIGNED BY

Catherine Boies Parker
Adjudicator